Supreme Court, U.S.
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No._____

In the Supreme Court
of the
United States

October Term 1995

Radha R. Murty Narumanchi — Petitioner

vs.

Wafeek Abdelsayed — Respondent

On Petition for Writ of Certiorari
To The Connecticut Appellate Court

PETITION FOR WRIT OF CERTIORARI

Radha R. Murty Narumanchi
Petitioner (Pro Se)
657 Middletown Avenue
New Haven, Conn. 06513
Phone: (203) 562-0536

57 pp

Questions Presented for Review

1. Does Section 237 of Title 52, Chapter 901, of Connecticut State General Statutes that allows ***even*** a ***"Public Official"*** plaintiff to claim general damages, without proof of actual harm to his reputation, under the *common law "presumption"* that ***where the dafamatory words are actionable per se, the law conclusively presumes the existence of injury to plaintiff's reputation,*** run afoul of Petitioner's First Amendment to the U.S. Constitution Freedom of Speech rights, as well as his liberty, property and due process rights guaranteed under the Fourteenth Amendment to the U.S. Constitution?

2. Does Section 237 of Title 52, Chapter 901, of Connecticut State General Statutes that allows ***even*** a ***"Public Official"*** plaintiff to claim *special* or *punitive* damages, *without actual proof of harm to his reputation*, under the *common law presumption* that ***"a failure to retract a libelous per se statement may be treated as evidence of malice"***, run afoul of Petitioner's First Amendment to the U.S. Constitution Freedom of Speech rights,as well as his liberty, property and due process rights guaranteed under the Fourteenth Amendment to the U.S. Constitution?

3. Did the Connecticut State Trial Court commit a serious reversible ***"fundamental error"*** of law in this case, involving ***specifically*** a ***"Public Official"*** plaintiff, claiming damages to his reputation, *by failing to instruct* the jury *to return separate awards* for *general* and *special* damages, as otherwise, it would be impossible to know, in view of the general verdict returned, whether the verdict was wholly an award of one or the other?

4. Did the Connecticut State Trial Court commit a serious reversible ***"fundamental error"*** of law in this case, involving ***specifically*** a ***"Public Official"*** plaintiff, claiming damages to his reputation, by failing to instruct the jury about the *St. Amant's heightened standard* that *"Public Official"* plaintiff must prove that defamatory publication was made with *"actual malice"* i.e. with knowledge that it was false or with reckless disregard of whether it was false or not, where *"reckless conduct"* is ***not*** measured by whether reasonably prudent man would have published or would have investigated before publishing, *"and there must be sufficient evidence to permit conclusion that defendant in fact entertained serious doubt as to truth of his publication ?*

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Article VI of the United States Constitution

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment.1. to The U.S. Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment. XIV. to The U.S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 237, Title 52, Chapter 901 of Connecticut General Statutes

Sec.52-237. **Damages in actions for libel.**

In any action for a libel the defendant may give proof of intention; and unless he proves either malice in fact or that the defendant, after having been requested by him in writing to retract the libelous charge, in as public a manner as that in which it was made, failed to do so within a reasonable time, he shall recover nothing but such actual damage as he may have specially alleged and proved.

List of Parties to the Proceedings

Wafeek Abdelsayed Respondent/Plaintiff	Represented by: Brian M. Gildea Gildea & Stevens, L.L.C. 512 Blake Street New Haven, Conn. 06515 Phone: (203) 397-8891

Applicability of 28 U.S.C.S. Sec. 2403 (b)

State of Connecticut	Represented by: Richard Bloomenthal Attorney General 110 Sherman Street Hartford, Conn. 06105 Phone: (860) 566-4990

Statement of Possible Applicability of 28 U.S.C.S. Sec. 2403 (b)

Pursuant to U.S. Supreme Court Rule 29 (4) (c) Petitioner would like to submit that constitutionality of Section 237 of Title 52, Chapter 901, of Connecticut General Statutes is drawn into question in this Petition for a *Writ of Certiorari* to the Connecticut Supreme Court. In the Courts Below, i.e. before the Connecticut State Superior Court for New Haven County at New Haven, and the Appellate Court, State of Connecticut was not a party, see *Wafeek Abdelsayed vs. Murty Narumanchi, 39 Conn. App. 778 (1995).*

Petition for a Writ of Certiorari To The Connecticut Supreme Court

Petitioner, Radha R. Murty Narumanchi, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the Appellate Court for Connecticut State in the case of *Wafeek Abdelsayed vs. Murty Narumanchi*, 39 Conn. App. 778, on December 5, 1995; Rehearing *denied* January 25, 1996; and Petition for Certification to Appeal *denied* by Connecticut Supreme Court on March 11, 1996.

Opinions Below

The published Opinion of the Connecticut Appellate Court, which affirmed the trial court, is reproduced as Appendix "C"; Rehearing *denied* January 25, 1996 and Petition for Certification to Appeal *denied* by Connecticut Supreme Court on March 11, 1996 are reproduced as Appendixes "B" and "A" respectively.

Jurisdictional Statement

Petitioner's Petition for Certification to Appeal was *denied* by Connecticut Supreme Court on March 11, 1996. That Court is the state court of last resort with the discretion to review the judgment of a lower court. This petition for a Writ

of Certiorari is filed under U.S. Supreme Court Rule 13(1) within 90 days after entry of the order denying discretionary review by the said State Court of last resort.

The Judgment of Connecticut Appellate Court (Appendix "C") was explicitly based on the *First* and the *Fourteenth* Amendments to the U. S. Constitution; but it was unfortunately *co-mingled* with not only Section 237 of Title 52, Chapter 901, of Connecticut State General Statutes, but also *co-mingled* with a bevy of *no longer constitutionally valid common law presumptions.* Furthermore, implicated in this case are: Article VI of the U. S. Constitution; and 42 U.S.C.S.§ 1983.

Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C.S. § 1257 (a).

Manner in Which Constitutional Claims Were Raised

Milo Altschuler, Defendant/Petitioner Narumanchi's attorney, took the following actions until December 31, 1995: (1) A variety of federal constitutional issues under the First and the Fourteenth Amendments to the U.S. Constitution were raised as proper "Defenses" in defendant (now Petitioner) Narumanchi's responsive pleadings in the trial court; (2) On the eve of the trial, on

March 18, 1994, a number of these constitutional defenses were specifically requested to be included in the charge to the jury, which were *denied* by the trial judge; (3) The constitutional arguments were presented at the conclusion of the trial, by seeking a Directed Verdict in favor of the defendant, which were *denied;* (4) After trial judge's jury charge, on March 23, 1994, *exceptions were made* again on the ground of the constitutional defenses; (5) Later, at a Hearing on April 5, 1994, on defendant's Motions to Set the Verdict Aside and Remittitur, the constitutional arguments were reiterated at the trial court level, which were *denied,* once again, by the trial court; (6) The Appeal Brief under Docket No.13548 before the Connecticut Appellate Court raised the constitutional questions on September 16, 1994, which were reiterated at the Oral Hearing on September 18, 1995, but which were later *rejected* by the Appellate Court in its Judgment dated December 5, 1995, see *Abdelsayed,* ibid (Appendix "C"); (7) Then, Appellant Narumanchi, pursued the constitutional issues on a *pro se* basis, and requested for a Re-Hearing, specifically on constitutional grounds, but the request was *denied* on January 25, 1996; (8) Then, proceeding again on a *pro se* basis, Petitioner Narumanchi requested the Connecticut Supreme Court to grant him Certification to Appeal the Appellate Court's Judgment, on constitutional grounds, but his Petition was *denied* on March 11, 1996; and (9)

Now, as a court of last resort to safeguard Petitioner's federally guaranteed constitutional rights, under the First and the Fourteenth Amendments to the United States Constitution, Petitioner, proceeding once again on a *pro se* basis is seeking *Writ of Certiorari* to the Connecticut Supreme Court, within the 90-day time limit mandated under U.S. Supreme Court Rule 13(1).

Statement of The Case

On or about March 30, 1989 Petitioner (Radha R. Murty Narumanchi) wrote a memo to the faculty of the Department of Accounting at Southern Connecticut State University ("SCSU") that a certain proposal looked like a copy-cat proposal. Subsequently, Respondent Wafeek Abdelsayed raised the issue at a faculty meeting and demanded to know if he was the subject of Petitioner's memorandum. Petitioner was also threatened by the said respondent during the said meeting. Petitioner thereafter wrote a letter to the President of SCSU requesting an investigation into the allegation. After an investigation, by meeting with the Petitioner and the Respondent, Vice-President Pinciaro of SCSU made a finding on May 15, 1989 that there had been no plagiarism. Thereafter Pinciaro also refused to review further documentation and advised the Petitioner to cease making any further request. Petitioner accordingly

ceased raising the issue and left for India during his summer break. While Petitioner was in India, Respondent brought the instant action in New Haven, Connecticut, Superior Court in July 1989.

The trial judge has designated Respondent, Wafeek Abdelsayed, as a *"Public Official"* during the trial in accordance with the requirement under the Constitution of the United States, for which an exception was taken after the jury charge, but no appeal was ever made by the Respondent on that issue.

To prove harm to his reputation and other damages, Respondent Wafeek Abdelsayed produced a number of witnesses (Plaintiff's Witnesses) during the trial in the month of March 1994. Plaintiff's own witnesses, Michael J. Adanti, President, SCSU; and Anthony Pinciaro, Vice-President, SCSU, testified that they took no action against Respondent. *They also testified that as a result of Petitioner's statement, they thought no less of Plaintiff.* Another witness of Respondent, a Mr. Fahringer, who knew both Petitioner and Respondent, and who was at the first meeting of the department, when the statement about copy-cat proposal was discussed, *testified that he thought no less of Respondent as a result of Petitioner's statement.*

In fact, none of Respondent's witnesses ever testified during the trial to indicate any actual harm to Respondent's reputation.[1]

Testimony during the trial also contradicted Respondent's allegations that he did not obtain tenure[2]; suffered medical illness[3]; and did not complete his graduate courses[4]. *Throughtout these proceedings, Petitioner steadfastly believed that the statement he made was accurate and correct*[5].

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[1] To the contrary, Respondent, Abdelsayed, in fact, became the Chair of the Department a few years later, and continued to be so to the end of the trial in March 1994.

[2] Michael J. Adanti, President of SCSU testified that as per the contract Respondent Abdelsayed did receive tenure in his seventh year of service.

[3] Respondent Abdelsayed did not produce any expert witness to testify to this claim.

[4] In fact, Respondent's own testimony and Petitioner's Exhibit 3 showed that Respondent had too many *"incomplete"* courses at the University of Connecticut, over an extended period of time (semesters and years), and *prior to Petitioner making any statement in March 1989.*

[5] In fact, in his closing arguments, Respondent's own attorney, Brian Gildea, used this as a pretext to *excite and prejudice* the jury by making the following argument: *"And you heard the defendant testify on the stand that to this very moment, to this very day as of yesterday, he continues to, in his mind and in his heart, make that accusation –*

Respondent Abdelsayed spent a total of one hour and twenty minutes defending himself against Petitioner's statement. The total period of time the alleg- tion was pending was forty-six days, i.e. from March 30, 1989 to May 15, 1989.

At the end of the trial, Petitioner's motion for a Directed Verdict was *denied* by the trial court on the basis that proof of damage to the reputation of Respondent was not required because the defamation was *per se.*

The trial court then instructed the jury, among other things, as follows:

At the very outset of the Jury Charge

> *"Now, because of the nature of the allegation, namely, plagiarism, this is to be considered by you as libelous or slanderous per se, that is, in and of itself, because it infers a lack of integrity in the plaintiff's profession as a college professor..."* (T, 3/23/94, p.38)[6] (emphasis supplied).

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that charge of plagiarism in spite of the fact that all of this stuff has shown that it didn't occur." (T, 3/23/94, p.9).

[6] Hereafter the references to "T" are to the "transcript" in the Trial Court, which will be made available in the Joint Appendix.

Later, during Jury Charge

"As to the issues of truth and conditional privilege, the defendant has the burden of proof on those issues by a fair preponderance of the evidence." (T, 3/23/94, p.41) (emphasis supplied)[7].

"Now, where the defendant has alleged certain affirmative defenses, which he has here, he's saying, in effect, what I said was true, not false. Where the defendant says that, he has the burden of proving that." (T, 3/23/94, p.45) (emphasis supplied)[8]

"When the defendant claims that the alleged defamatory statement was true,he has the burden of proof that it was true by a fair preponderance of the evidence." (T, 3/23/94, p.49)[9].

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[7] Please note how the trial court has shifted the burden of proof from the "*Public Official*" Plaintiff (Respondent) to the Petitioner (Defendant), in violation of the *Federal Constitutional Law.* This issue was not raised in the Courts below, but Petitioner would like to address this issue in his Brief on Merits.

[8] See Note No. 7 above.

"It is not enough to justify the defendant in making the statement that he believed it to be true or even had reasonable grounds for that belief. If the defendant has proved to you that the statement at the time he made it was substantially true, then your verdict must be in his favor. But if he fails to so prove the truth of the statement, then you will disregard that defense.[10] *And what I've just said to you only relates to the defense of proof. " (T, 3/23/94, p.47).*

"Now, malice in fact, which is what we're talking about now, it does not necessarily mean[11] *hatred or spite or ill will against the plaintiff, but can be found if there has been some improper or unjustifiable motive for publishing the slanderous statement."*

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9 See Note No. 7 above.

10 See Note No. 7 above.

11 Once again please note how *"Malice in Fact"* has been denigraded to less than the *Common Law Malice*, instead of defining it by the *heightened Constitutional Law Standard.* This issue was not raised in the Courts below, but Petitioner would like to address this issue at length in his Brief on Merits.

(T, 3/23/94,p.38) (emphasis supplied).

"If you find the statement against the plaintiff of plagiarism was false and that the defendant refused to retract the statement he made, his refusal to do so was, in effect, a reaffirmation of said statement after he knew that it was falseand defamatory and may be treated as evidence of his reckless disregard of its falsity as of the time he made the statement accusing the plaintiff of plagiarism. A failure to retract may be treated as evidence of malice." (T, 3/23/94, p.49) (emphasis supplied).

"Now, in a case involving defamation, where the defamatory words are actionable per se, and I've instructed you that they are if you find them to be false, the law conclusively presumes the existence of injury to the plaintiff's reputation. The plaintiff is not required to plead or prove general damages. Where defamatory words are actionable per se, the plaintiff is entitled to recover what we call general damages even in the absence of any allegation as to them

orspecific proof of their amount." (T, 3/23/94, p.50)(emphasis supplied).

"Now, if you should conclude that the defendant did make a libelous statement about the plaintiff, but that it, in fact, caused the plaintiff no substantial damages, the plaintiff is still entitled to recover in this action some nominal sumin vindication of his reputation againstthe accusations made against him." (T, 3/23/94, p.52) (emphasis supplied).

The trial court *also failed to instruct the jury* in accordance with Petitioner's following request:

"Reckless disregard requires sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. If the defendant believed that his statement was true, then the plaintiff is not entitled to recovery." (emphasis supplied).

Then the trial court instructed the jury to bring in a ***general verdict,*** namely a plaintiff's verdict or a defendant's verdict, as follows:

> *"There's a defendant's verdict, and that reads, in this case, the jury finds the issues for the defendant as against the plaintiff. You date it, have your Fore- person sign it. If it is your decision thatthe plaintiff is entitled to prevail here, then you'll use the plaintiff's verdict form,and that simply says in substance that you find the issues for the plaintiff against the defendant and therefore find for the plaintiff to recover the following damages, and there's a space there, and you would insert in there, if this be your verdict, the amount of money that you feel the plaintiff is entitled to under the instructions whichl have given to you." (T, 3/23/94, p.54-55). (emphasis supplied).*

Subsequently the jury returned a *general verdict* in favor of Plaintiff in the amount of $15,000, which was accepted by the trial court on March 23, 1994. Petitioner's subsequent Motions to Set Aside the Verdict and for Remittitur were also *denied* by the trial court, after rejecting petitioner's federal constitutional arguments.

On appeal, the Connecticut State Appellate Court *affirmed* the lower court's judgment (duly

rejecting Petitioner's federal constitutional arguments), and a motion for re-hearing filed by the *pro se* Petitioner was *denied.* Subsequently, petitioner attempted to have the Connecticut Supreme Court grant him Certification to Appeal, but that attempt also failed on March 11, 1996.

Reasons For Granting The Writ

Question No. 1

Does Section 237 of Title 52, Chapter 901, of Connecticut State General Statutes that allows a ***even*** a ***"Publ ic Official"*** plaintiff to claim general damages, on par with a "private" plaintiff, without proof of actual harm to his reputation, under the *general common law "assumption"* that where the dafamatory words are actionable ***per se, the law conclusively presumes the existence of injury to plaintiff's reputation,*** run afoul of Petitioner's First Amendment to the U.S. Constitution Freedom of Speech rights and/or his rights to liberty, property, and due process guaranteed under the Fourteenth Amendment to the U.S. Constitution?

Discussion

This is specifically a case where a "Public Official" plaintiff has claimed alleged damages to his reputation, but wanted to collect[12] ***and has***

been allowed to collect same without actual proof of damage to his reputation or otherwise[13].

Since 1964, through the seminal case of *New York Times vs.Sullivan,* 376 U.S. 254 (1964), and its progeny, this Court has held time and again, that when damages are claimed for alleged libel by *"Public Official"* plaintiffs or *"Public Figure"* plaintiffs or where the matter is of *"Public Concern", the correct law to be applied is the Federal Constitutional Law,* and *not* the *State Law* or the *Common Law, inasmuch as the First Amendment Freedom of Speech rights, and the Fourteenth Amendment life, liberty, property or due process rights of defendants are implicated in such claims.* In short, the U.S. *"Constitutional Law"* is the supreme Law of the Land and the States are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, etc.[14], by following

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[12] The jury was totally confused on this issue. One of the questions raised by them after some deliberations was: "If defendant is found guilty, does that imply monetary compensation?"

[13] In fact, the evidence produced by Respondent has only established that Respondent Abdelsayed has not suffered any damage to his reputation.

[14] See Section 1 of the Fourteenth Amendment to the U.S. Constitution, cited on page (viii) hereinabove.

the old "*common law*" practices, including any impermissible *"presumptions"*, under the rubric of their own statutory laws, which are in direct conflict with the supreme law of the land[15]. In fact, in the case of *Farmers Educational & Coop Union v. Wday, Inc.*, 360 U.S. 526, 79 S.Ct. 1302 (1959), this Court has proclaimed that it may abrogate state law when satisfied that enforcement of state law will stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Section 237 of Title 52 of Chapter 901 of Connecticut General Statutes is interpreted by Connecticut State Courts in the case of libel *per se* claims, or when the defamatory words are actionable *per se, that the law conclusively presumes the existence of injury to plaintiff's reputation,* see *Urban v. Hartford Gas Co.*, 139 Conn. 301, 308, 93 A.2d 292 (1952); also *Battista v. United Illuminating Co.*, 10 Conn., App. 486, 492, 523 A.2d 1356, cert. denied, 204 Conn. 803, 525 A.2d 1352 (1987). This Connecticut case law may be apt and applicable in the case of *"Private"* (or *non-Public Official/Figure*) plaintiffs[16], but

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[15] See Article VI of the U.S. Constitution cited on page (viii) hereinabove which makes this point amply clear.

[16] The *Constitutional Law*, as enunciated by this Court

vestiges of such *"common law"* practices should have no place in the instant case, where the libeled Plaintiff is a *"Public Official"*; and the applicable law, therefore, should have been the federal *"Constitutional Law"*, as requested by the Petitioner throughout the trial and in his appeals in Connecticut State Court system. It is needless to say that the Connecticut Appellate Court has indiscriminately cited and applied this old *"common law"* practice in the instant case (after rejecting Petitioner's federal constitutional arguments), eventhough the plaintiff is a *"Public Official"*.[17]

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in the case of *Philadelphia Newspaper, Inc. v. Hepps*, 475 U.S. 767 (1985) is clear, namely that even in a case such as this one, where a newspaper published speech of public concern about a *private figure*, the private- figure *plaintiff cannot recover damages without also showing that the statements at issue are false.* This Court, speaking through Justice O'Connor, further held that *"to ensure that true speech on matters of public concern is not deterred, the common law presumption that defamatory speech is false cannot stand."* This Court held so *"because in such a case the scales are in an uncertain balance as to whether the statements are true or false, the Constitution requires that the scales be tipped in favor of protecting true speech."* If the *common law presumption* that defamatory speech is false cannot stand in the case of a private figure plaintiff, how can it ever stand in the case of a Public Official plaintiff?

[17] The Appellate Court also seems to indicate that Petitioner's constitutional claim was not properly preserved. Petitioner would like to submit that *"mere failure to*

The correct *Law*, that should have been applied to the instant case is the *U.S. Constitutional Law*, as interpreted and outlined by this Court in the case of *Linn v. United Plant Guard Workers of Amer. Loc.* 114, 382 U.S. 53, 86 S.Ct. 657 (1986) in the following words:

> *"We, therefore, hold that a complainant may not recover except upon proof of such harm, which may include general injury to reputation, consequent mental suffering, alienation of associates, specific items of pecuniary loss, or whatever form of harm would be recognized by tort law." Id. at 664. (emphasis supplied).*

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interpose constitutional defenses prior to announcement of decision which might support it" should not prevent him from invoking such grounds now -- see *Tehan v. United States ex rel. Shott,* 382 U.S. 406, 409 n.3, 86 S.Ct.459, 461; *Linkletter v. Walker,* 381 U.S. 618, 622-29, 85 S.Ct. 1731, 1733-39; *Griffin v. State of California,* 380 U.S. 609, 85 S.Ct. 1229; *White v. State of Maryland,* 373 U.S. 59, 83 S.Ct.1050. Accord: *Curtis Publishing Co. v. Butts,* 87 S.Ct. 1975 (1967), Rehearing denied, 88 S.Ct. 11,13 (1967). Also, where the record supports a legal argument raised for the first time, an appellate court may exercise its discretion to address the issue where refusal to consider it would result in miscarriage of justice, *F.D.I.C. v. 232, Inc.*, 920 F.2d 815, 818 (11th Cir. 1991).

> *"Likewise, the defamed party must establish that he has suffered some sort of compensable harm as a prerequisite to the recovery of additional punitive damages." (emphasis supplied).*

It should, therefore, be clear that the Connecticut state law , Section 237, Title 52, Chapter 901 (either naked on its very face, and/or as it is being actually interpreted, implemented and enforced by its judiciary, starting from the lower level trial court to the highest level state supreme court, in terms of the old *common law* practices, including many of their *now constitutioally invalid "presumptions"*, ***especially*** in a case involving *a "Public Official"* plaintiff), rests totally on a bevy of *constitutionally invalid presumptions, that are no longer valid and no doubt are in direct violation of Petitioner's* ***not only*** *the First Amendment to the U.S. Constitution Freedom of Speech rights*[18]***, but also*** *his rights to liberty, property, and due process*

---

[18] It may be pointed out here that in the case of Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116 (1965) this Court held more than thirty years ago that a state law, resting on ***"invalid presumption"*** is unconstitutional on its face. And, in the case of Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997 (1974), this Court ordered a new trial because the jury was allowed to impose liability without fault and was permitted to presume damages without proof of injury.

guaranteed under the Fourteenth Amendment to the U.S. Constitution.

Question No. 2

Does Section 237 of Title 52, Chapter 901, of Connecticut State General Statutes that allows a ***even*** a ***"Public Official"*** plaintiff to claim special or punitive damages, without actual proof of harm to his reputation, under the *common law "assumption"* that ***"a failure to retract a libelous per se statement may be treated as evidence of malice"***, run afoul of Petitioner's First Amendment to the U.S. Constitution Freedom of Speech rights, and/or his rights to liberty, property, and due process guaranteed under the Fourteenth Amendment to the U.S. Constitution?

Discussion

The trial court also gave the jury a charge, based upon Section 237 of Title 52, Chapter 901, of Connecticut State General Statutes that ***"a failure to retract a libelous per se statement may be treated as evidence of malice"*** and the Appellate Court for Connecticut has affirmed this *common law practice*, by citing the case of *Holbrook v. Casazza*, 204 Conn. 349, see *Abdelsayed*, ibid (Appendix - p.009). However, in the case of *St. Amant v. Thompson*, 390 U.S. 727,

88 S.Ct.1323 (1968), this Court has refined the definition of the phrase *"reckless disregard"* in terms of *U.S. Constitutional Law*, where *"Public Official"* plaintiffs claim damages, and held that:

> *"With respect to rule that public official must prove the defamatory publication was made with 'actual malice', that is, with knowledge that it was false or with reckless disregard of whether it was false or not, reckless conduct is not measured by whether reasonably prudent man would have published or would have investigated before publishing, and there must be sufficient evidence to permit conclusion that defendant in fact enter-tained serious doubt as to truth of his publication." (emphasis supplied).*

Petitioner would like to humbly submit that the trial court has totally failed to charge the jury about this *heightened U.S. Constitutional Law Standard*[19], in the instant case, where the plaintiff is a *"Public Official"*; to the contrary, it has given the

[19] There is confusion among the jury on this issue of 'malice' when they came back to seek instructions on: "Is malice mandatory because of the seriousness of the charge of plagiarism if we find for the plaintiff?".

jury charges that are totally in violation of the said *Constitutional Law Standard*, since the true effect of the jury charge (see pages 7-12 hereinabove) is to impose liability upon the defendant, without fault, in the light of the *St. Amant* standard; and the jury was also permitted to *presume* either damages or malice on the basis of constitutionally invalid presumptions, in a case where a *"Public Official"* plaintiff is claiming damages for libel.

Petitioner would also like to submit that if he ever had no serious doubts as to truth of his publication[20], how can he be expected to retract the statement, and then how can such non-retraction be presumed to constitute malice, for, lack of serious doubt on the part of Petitioner negates the very theory of malice[21]?

---

[20] See footnote # 5 earlier, where it was pointed out that Plaintiff Abdelsayed's own attorney, Brian Gildea, noted in his closing argument, contrary to *St. Amant's heightened Constitutional Law Standard* that: *"And you heard the defendant testify on the stand that to this very moment, to this very day as of yesterday, he continues to, in his mind and in his heart, make that accusation -- that charge of plagiarism in spite of the fact that all of this stuff has shown that it didn't occur."* (T, 3/23/94, p.9).

[21] See Note. 19 above about the jury confusion on the issue of malice.

Question No. 3

Did the Connecticut State Trial Court commit a serious reversible ***"fundamental error"*** of law in this case, involving ***specifically*** a *"Public Official"* plaintiff, claiming damages to his reputation, *by failing to instruct* the jury *to return separate awards* for general and special damages, as otherwise, it would be impossible to know, in view of the general verdict returned, whether the verdict was wholly an award of one or the other?

Discussion

The trial court required the jury to return only a *general verdict* either in favor of plaintiff or in defendant's favor. The jury was totally confused and one of the questions that they raised with the Court after some deliberation was: "What does general damages consist of?". And the trial Court responded by stating thus:

> *"The answer to that is, general damages consist of the injury or damage to one's reputation. Special damages are the monetary losses, you know, if you find any to be."*

And a companion question raised by the jury was: "If defendant is found guilty, does that imply

monetary compensation?", to which the trial Court had responded thus:

> *"The answer to that is in this portion of my charge which I previously gave to you, if you should conclude that the defendant did make a libelous statement about the plaintiff, but that, in fact,caused the plaintiff no substantial damage, the plaintiff is still entitled to recover in this action some nominal sum as a recognition of the wrong that has been done him and a vindication of his reputation against the accusation made against him."*

In *New York Times,* ibid, this Court had held that where trial judge did not instruct jury in libel case to differentiate between *general* and *punitive* damages, and it was impossible to know, in view of the general verdict returned, whether the verdict was wholly an award of one or the other, the judgment would be reversed and the case remanded. By the same token, the general verdict in the instant case also cannot withstand the *same Constitutional Law* scrutiny.

Furthermore, in the instant case where a ***"Public Official"*** plaintiff is claiming damages for alleged libel, the trial court has committed a

***"fundamental error"**, in its charge to the jury. see Hormel v. Helvering (1941)* 312 U.S. 552, 61 S.Ct. 719; *Maryland Casualty Co. v. Kador* (CA5th, 1955) 225 F2d 120, 122.

Question No. 4

Did the Connecticut State Trial Court commit a serious reversible ***"fundamental error"*** of law in this case, involving ***specifically*** a *"Public Official"* plaintiff, claiming damages to his reputation, by failing to instruct the jury about the *St. Amant's heightened standard* that *"Public Official"* plaintiff must prove that defamatory publication was made with *"actual malice"* i.e. with knowledge that it was false or with reckless disregard of whether it was false or not, where *"reckless conduct"* is *not* measured by whether reasonably prudent man would have published or would have investigated before publishing, *and there must be sufficient evidence to permit conclusion that defendant in fact entertained serious doubt as to truth of his publication?*

Discussion

As noted on page 11 hereinabove, the trial court had failed to instruct the jury about the *heightened Constitutional Law Standard*, with regard to *"actual malice"* enunciated by this Court

in the case of *St. Amant vs. Thompson*, 390 U.S. 727, 88 S. Ct. 1323 (1968).

On the other hand, the trial court's definition of *"actual malice"* in the instant case, is identical to the one's found to be objectionable by this Court, in the case of *Letter Carriers vs. Austin*, 418 U.S. 264 (1973). A comparison follows:

Trial Court's Charge to the Jury on the Issue of "Actual Malice" in the instant case

> *"Now, malice in fact, which is what we're talking about now, it does* ***not necessarily mean*** *hatred or spite or ill will against the plaintiff, but can be found if there has been some improper or unjustifiable motive for publishing the slanderous statement." (emphasis suppiied).*
>
> *"If you find the statement against the plaintiff of plagiarism was false and that the defendant refused to retract the statement he made, his refusal to do so was, in effect, a reaffirmation of said statement after he knew that it was falseand defamatory and may be treated as evidence of his reckless disregard of its falsity as of the time*

> *he made the statement accusing the plaintiff of plagiarism. A failure to retract may be treated as evidence of malice." (T, 3/23/94).*

This definition of *"Actual Malice"* by the trial court in the instant case, seems to be similarto the jury instructions noted as follows in the caseof *Letter Carriers, Ltd.*, Ibid:

> *"The term 'actual malice' is that conduct which shows in fact that at the time thewords were printed they were actuatedby some sinister or corrupt motive suchas hatred, personal spite, ill will, or desire to injure the plaintiff, or that the communication was made with such gross indifference and recklessness asto amount to a wanton or wilful disregard of the rights of the plaintiff." Letter Carriers, Ibid. at 269 (emphasis supplied).*

This Court hence held, in the case of *Letter Carriers*, ibid at 281, that:

> *"Instructions which permit a jury to impose liability on the basis of the defendant's hatred, spite, ill will, or*

> *desire to injure are "clearly impermissible." Beckley Newspapers Corp. v. Hanks, 389 U.S. 81, 82 (1967). "Ill will toward the plaintiff, or bad motives, are not elements of the New York Times standard." Rosenbloom v. Metromedia, Inc., 403 U.S. 29, 52 n.18 (1971) (Opinion of Brennan, J.). Accord, Garrison v. Louisiana, 379 U.S. 64, 73-74, 77-79 (1964); Henry v. Collins, 380 U.S. 356 (1965); Rosenblatt v. Baer, 383 U.S. 75, 84 (1966); Greenbelt Cooperative Publishing Assn. v. Bresler, 398 U.S. 6, 9-11 (1970). It is therefore clear that the libel judgments in this case must be reversed because of the court's erroneous instructions."*

Accordingly, this Court should find in the instant case also that the libel judgment of the Court below must be reversed, because of the trial court's erroneous and constitutionally impermissible instructions with regard to the phrase *"actual malice"*.

Furthermore, in the instant case where a ***"Public Official"*** plaintiff is claiming damages for alleged libel, the trial court has committed a

***"fundamental error"**, in its charge to the jury. see Hormel v. Helvering (1941)* 312 U.S. 552, 61 S.Ct. 719; *Maryland Casualty Co. v. Kador* (CA5th, 1955) 225 F2d 120, 122.

Conclusions

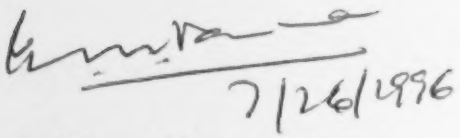
In conclusion, *certiorari* should issue to the Supreme Court of Connecticut, because the State of Connecticut, including its Judiciary, under the rubric of its impugned Section 237 of Title 52, Chapter 901, is not according the Petitioner proper protections under the *U.S. Constitutional Law*, as enunciated by this Court, but is in fact depriving him of his Freedom of Speech rights under the First Amendment to the U.S. Constitution, and also is depriving him of his Life, Liberty, or Property rights, without due process of law, all in violation of the Fourteenth Amendment to the U.S. Constitution.

Prayers

WHEREOF, the above premises considered, Petitioner, Radha R. Murty Narumanchi respectfully requests that a *writ of certiorari* issue to review the judgment and opinion of the Connecticut Appellate Court.

Respectfully submitted.

Petitioner (*Pro Se*)



(Radha R. Murty Narumanchi)
657 Middletown Avenue
New Haven, Conn. 06513
Phone: (203) 562-0536

SUPREME COURT
STATE OF CONNECTICUT

No. PSC-95-0247
Wafeek Abdelsayed v. Murty Narumanchi

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court [39 Conn.App. 778 (AC 13548)], it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT
ASSISTANT CLERK-APPELLATE
Dated: March 11, 1996
Notice sent: 3/11/96
Clerk, Superior Court, New Haven - CV89 0287047S
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Murty Narumanchi, pro se
Gildea & Stevens
Milo J. Altschuler
er
Murty Narumanchi, pro se in support of petition;
Robin Stevens in opposition.

No.A.C.13548

WAFEEK ABDELSAYED: APPELLATE COURT
V. : STATE OF CONN.
MURTY NARUMANCHI : JANUARY 24, 1996

O R D E R

THE MOTION OF THE DEFENDANT-APPELLANT FOR REARGUMENT OR RECONSIDE- RATION AND/OR IN THE ALTERNATIVE MOTION FOR REARGUMENT EN BANC, FILED DECEMBER 14, 1995 AND,

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D DENIED.

BY THE COURT
ASSISTANT CLERK - APPELLATE

NOTICE SENT: 1/25/96
GILDEA & STEVENS, L.L.C.
MILO J. ALTSCHULER
MURTY NARUMANCHI, Pro se
HON. JOHN C. FLANAGAN, S.T.R.
CV89 0287047S
REPORTER OF JUDICIAL DECISIONS.

38 Conn. App. 778

WAFEEK ABDELSAYED v. MURTY NARUMANCHI
(13548)

Schaller, Spear and Hennessy, Js.

The plaintiff college professor sought damages from the defendant, a professor at the same college, alleging that the defendant had defamed him by falsely accusing him of plagiarism. From the judgment rendered on the jury verdict in favor of the plaintiff, the defendant appealed to this court. He claimed, inter alia, that the plaintiff, as a public official, was required to present clear and convincing evidence of actual malice and that, because the plaintiff did not satisfy that burden, the trial court improperly denied his motion for a directed verdict. *Held:*

1. The trial court properly denied the defendant's motion for a directed verdict; evidence of the defendant's refusal to retract his statement and ill will between the parties, and ample and uncontroverted testimony establishing that the defendant knew his accusation to be false proved actual malice with the convincing clarity required by law.

2. The defendant's challenge to the trial court's actual instruction to the jury that the plaintiff did not need to prove actual injury to the reputation was not reviewable, he having failed to file a written request to charge that addressed that issue and having failed to take an exception to the instruction given.

Argued September 18 --
decision released December 5, 1995

Action to recover damages for defamation, brought to the Superior Court in the judicial district of Middlesex and tried to the jury before *Hon. John C. Flanagan*, state trial referee; verdict for the plaintiff; thereafter, the court denied the defendant's motion to set aside the verdict and for remittitur and rendered judgment in accordance with the verdict, from which the defendant appealed to this court. *Affirmed.*

Milo J. Altschuler, for the appellant (defendant).

Brian M. Gildea, with whom, on the brief, was *Robin Stevens*, for the appellee (plaintiff).

SPEAR, J. The defendant in this defamation action appeals from a judgment rendered in favor of the plaintiff in the amount of $15,000. The defendant claims that the trial court improperly (1)

denied his motion for a directed verdict because the plaintiff failed to prove actual malice by clear and convincing evidence and (2) instructed the jury to presume injury to the plaintiff's reputation on a finding that the defamatory words were actionable per se. We disagree with the defendant's assertions and affirm the judgment of the trial court.

The jury reasonably could have found the following facts. At all relevant times, the plaintiff and the defendant were professors in the accounting department of the school of business at Southern Connecticut State University. On March 30, 1989, the defendant wrote a memorandum to the accounting department that accused the plaintiff of plagiarizing the defendant's idea for a course to be offered at the university. The defendant again accused the plaintiff of plagiarism at a department meeting held the following day. The defendant wrote a letter to the president of the university requesting an investigation of the matter. After an investigation, Anthony Pinciaro, the university's vice president for academic affairs, found that the plaintiff had not committed plagiarism. After the finding, the plaintiff demanded that the defendant retract the plagiarism charge. The defendant refused to retract the charge and wrote to the president of the university that he was going to India, and that, upon his return, he was going to review his papers and "revert to this subject." Pinciaro advised the

defendant that there would be no further investigation.

The plaintiff subsequently brought the present action in defamation against the defendant claiming that the defendant's accusations not only damaged him in his professional capacity, but also caused him to suffer stress as well as lost income as a result of such stress. The plaintiff also claims that the stress interfered with his doctoral studies and caused him to develop an eye twitch. The defendant maintains that the plaintiff suffered no actual injury. At the close of the plaintiff's case, the defendant moved for a directed verdict on the ground that the plaintiff had failed to prove actual malice by clear and convincing evidence. The defendant also argued that the plaintiff was required to prove actual injury to his reputation, but had failed to do so. The trial court, in denying the defendant's motion, concluded that proof of injury to the plaintiff's reputation was not required, but would be presumed if the alleged defamation was found to be actionable per se.

The trial court thereafter instructed the jury: "Now, in a case involving defamation, where the defamatory words are actionable per se, and I have instructed you that they are if you find them to be false, the law conclusively presumes the existence of injury to the plaintiff's reputation. The plaintiff is

not required to plead or prove general damages. Where defamatory words are actionable per se, the plaintiff is entitled to recover what we call general damages even in the absence of any allegation as to them or specific proof of their amount." The jury returned a verdict for the plaintiff in the amount of $15,000. After denying the defendant's motion to set aside the verdict, the court rendered judgment for the plaintiff. This appeal followed.

I

The defendant first maintains that the trial court improperly denied his motion for a directed verdict because the plaintiff, according to the defendant, failed to present clear and convincing evidence of actual malice. In light of the evidence presented at trial, we do not agree.

The trial court ruled that the plaintiff was, in fact, a public figure. This ruling is consistent with our Supreme Court's holding in *Kelley v. Bonney*, 221 Conn. 549,581, 606 A.2d 693 (1992), where the court concluded that "a public school teacher is a public official for defamation purposes." As such, the law placed the burden on the plaintiff to prove actual malice by clear and convincing evidence. We must now review whether the plaintiff met this burden.

It is well settled that a public official is precluded from recovering damages for defamation unless he or she proves that the defamatory statement was made with actual malice. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct.710, 11 L.Ed.2d 686 (1964); *Holbrook v. Casazza*, 204 Conn. 336,342, 528 A.2d 774 (1987), cert. denied, 484 U.S. 1006, 108 S.Ct.699, 98 L.Ed 2d (1988). Actual malice requires that the statement, when made, be made with actual knowledge that it was false or with reckless disregard of whether it was false. *New York Times Co. v. Sullivan*, supra, 376 U.S. 279-80; *Woodcock v. Journal Publishing Co.*, 230 Conn. 525,535, 646 A.2d 92 (1994), cert. denied., U.S., 115 S.Ct. 1098, 132 L.Ed.2d 1066 (1995). A negligent misstatement of fact will not suffice; the evidence must demonstrate a "purposeful avoidance of the truth." *Harte-Hankes Communications, Inc. v. Connaughton*, 491 U.S. 657, 692, 109 S.Ct.2678, 105 L.Ed.2d 562 (1989). Moreover, the plaintiff must prove actual malice by the heightened standard of clear and convincing evidence. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 773, 106 S.Ct.1558, 89 L.Ed.2d 783 (1986); *Brown v. K.N.D. Corp.*, 205 Conn. 8,10, 529 A.2d 1292 (1987).

Our standard of review is governed by the constitution and case law. In defamation cases

where the trial court has found actual malice on the part of the defendant, we have an obligation and the "constitutional responsibility" to make an independent review of the record to make sure that there has been no forbidden intrusion on the right of free speech. *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 501, 104 S.Ct.1949, 80 L.Ed.2d 502 (1984); see also *Woodcock v. Journal Publishing Co.*, supra, 230 Conn. 536; *Brown v. K.N.D. Corp.*, supra, 205 Conn. 14. "There is no doubt ... that a trial court finding of actual malice in a defamation case requires an appellate court to conduct an independent review of the record and to draw its own conclusion as to whether actual malice has been proven by clear and convincing evidence." *Brown v. K.N.D. Corp.*, supra, 12.

Having conducted an independent review of the record, we are persuaded that the proof of actual malice presented at trial evidences the convincing clarity required by the constitution and our case law. The record demonstrates that the defamatory words used by the defendant were made with actual knowledge or reckless disregard of their falsity.

The defendant first accused the plaintiff of plagiarism in a memorandum dated March 30, 1989, submitted to the accounting department that

read in part: "I remember having read... of a copy-cat proposal to introduce a course on financial statement analysis. I have the following comments to make concerning this: 1. The gentleman that made this proposal did not have the honesty to point out that the course proposal originated from me. Under other circumstances this would have been considered as nothing short of plagiarism...." At a meeting with Pinciaro, the university's vice president for academic affairs, Alan Leader, the dean of the university's school of business, and Roger Bergh, the vice president for student and university affairs, the defendant once again accused the plaintiff of "commit(ting) plagiarism by not providing recognition to him as being the author of the proposal to establish a financial statement and analysis course at the institution."

Contrary to the defendant's allegations, the evidence reveals that the idea for a course on financial statement analysis did not originate with the defendant. In his testimony, the defendant admits that he "took the course from the person that had created the course in the United States colleges." Consequently, the defendant knew, at the time he wrote his original memorandum accusing the plaintiff of plagiarism, that his statement that the "course proposal originated from me" was false. The defendant further admitted at trial that although he accused the plaintiff of copying his idea to

propose the course, the defendant, in fact, never proposed such an idea.

Also, there was ample, uncontroverted testimony from university officials and accounting professors that the idea for a course in financial statement analysis was not sufficiently original to constitute plagiarism. Relying on this testimony, the jury could reasonably have concluded that the defendant also knew that the actions taken by the plaintiff could not constitute plagiarism.

The record also reflects evidence of ill will between the parties. While "proof that a defamatory falsehood has been uttered with bad or corrupt motive...will not be sufficient to support a finding of actual malice...such evidence may assist in drawing an inference of knowledge or reckless disregard of falsity." (Citations omitted; internal quotation marks omitted.) *Holbrook v. Casazza,* supra, 204 Conn. 346-47; see also 3 Restatement (Second), Torts § 580A, comment (d) (1977). In his testimony, the plaintiff maintained that the relationship between the defendant and the plaintiff "was one of hostility" ever since 1985 when the plaintiff decided not to vote for the "(defendant's) proposal to separate the Accounting and Finance Department." In fact, the defendant concedes in his brief that "there is evidence of ill-will and litigation between these parties." Consistent with our

Supreme Court's holding in *Holbrook*, such evidence weighs heavily in our evaluation as to whether the defendant acted with the requisite malice.

Likewise, "(a) refusal to retract a statement that has been demonstrated to be false and defamatory 'might be relevant in showing recklessness at the time the statement was published.'" *Holbrook v. Casazza*, supra, 204 Conn. 349, quoting 3 Restatement (Second), Torts § 580A, comment (d) (1977). In the present case, Pinciaro investigated the accusation of plagiarism and concluded on May 18, 1989, that "plagiarism was not committed by (the plaintiff)." Thereafter, on June 2, 1989, the plaintiff wrote in a letter to the defendant: "I am therefore demanding an immediate public apology from you and that you formally retract your libelous charge of plagiarism against me at once." At trial, the defendant admitted that he did not retract his statement or "respond in any fashion whatsoever to the letter of Mr. Abdelsayed."

In sum, the defendant's refusal to retract the statement, the demonstrated ill will between the parties, the defendant's admission that the idea for the course did not originate with him, and his admission that he never proposed the idea to the department are evidence of "'the high degree of

awareness of (the statement's) probable falsity'....."*Holbrook v. Casazza*, supra, 204 Conn. 349, quoting *Garrison v. Louisiana*, 379 U.S. 64, 74, 85 S.Ct.209, 13 L.Ed.2d 125 (1964). The trial court therefore properly denied the defendant's motion for a directed verdict because the record demonstrates proof of actual malice with the convincing clarity required by law.

II

The defendant next claims that the trial court improperly instructed the jury to presume the existence of injury to the plaintiff's reputation. He argues that the trial court should have instructed the jury that injury to the plaintiff's reputation must be proven to recover for defamation. The defendant, however, has failed to preserve this claim properly for appeal. Our rules of practice preclude us from considering claims of error unless they are distinctly raised at trial. See Practice Book § 4185. Specifically, Practice Book § 315 provides that our courts "shall not be bound to consider error as to the ...failure to give, an instruction unless the matter is covered by a written request to charge or an exception has been taken by the party appealing immediately after the charge is delivered..." In the present case, the defendant did not take exception to the jury charge on the issue of presumption of injury immediately after the trial court delivered its

instruction. Further, while the defendant did prepare a written request to charge, that proposed charge did not distinctly address the issue the defendant now raises.[1] We, therefore, do not address his claim on appeal.[2]

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[1] The defendant's request to charge stated in part: "In order for you to find that this statement was defamatory, you must find by clear and convincing evidence that it tends to harm the reputation of the plaintiff as to lower him in the estimation of the community (so as) to deter third persons from associating or dealing with him." We find that these words did not sufficiently afford notice to the trial court as to the claimed error the defendant now raises.

[2] We note, however, that the defendant's improperly preserved claim has no merit. The defendant maintains that there must exist actual injury to the plaintiff's reputation for a statement to be considered defamatory. This claim contradicts well settled principles of law. "To be defamatory, it is not necessary that the communication actually cause harm to another's reputation...*Its character depends upon its general tendency to have such an effect.*" (Emphasis added.) 3 Restatement (Second), Torts §559, comment (d) (1977). To prove the existence of a defamatory statement, therefore, the plaintiff need not prove actual injury, but instead, only a tendency to injure.

Moreover, the trial court's charge instructing the jury to presume the existence of injury to the plaintiff's reputation comports to the law of defamation as it has evolved in our state. While a plaintiff must ordinarily prove injury to reputation as general damages in order to recover, our courts have outlined an exception to this requirement. "When the defamatory words are actionable per se, the law conclusively presumes the existence of injury to the plaintiff's reputation. He is required neither to plead nor prove it." *Urban v. Hartford Gas Co.*, 139 Conn. 301,308, 93 A.2d 292 (1952); see also *Battista v. United Illuminating Co.*, 10 Conn. App. 486, 492, 523 A.2d 1356, cert. denied, 204 Conn. 803, 525 A.2d 1352 (1987).

This court has delineated specific categories of speech deemed actionable per se where "the defamatory meaning of (the speech) is apparent on the face of the statement..." *Battista v. United Illuminating Co.*, supra, 491-92. One such category is speech that is likely to injure one in one's business and profession. *Charles Parker Co. v. Silver City Crystal Co.*, 142 Conn. 605, 612, 116 A.2d 440 (1955); *Proto v. Bridgeport Herald Corp.*, 136 Conn. 557, 566, 72 A.2d 820 (1950). The defendant's charge of plagiarism in the present case falls squarely within this category because his statements were likely to injure the reputation of the

The judgment is affirmed.

In this opinion the other judges concurred.

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plaintiff as a professor and accountant. As such, the plaintiff was not required to prove actual damages, but was instead entitled to a presumption as to injury to his reputation. The trial court's jury charge was, therefore, proper.

Supreme Court
F I L E
AUG 15 1996
CLERK

(2)

No. 96-144

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In the Supreme Court
of the
United States

October Term 1995

Radha R. Murty Narumanchi Petitioner

vs.

Wafeek Abdelsayed Respondent

==========

RESPONDENTS' BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

==========

Brian M. Gildea
Gildea & Stevens, L.L.C.
512 Blake Street
New Haven, CT 06515
Phone: (203)397-8891

8 pp

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STATEMENT OF JURISDICTION

The respondent does not believe the Supreme Court can exercise jurisdiction in this matter since this petition does not qualify for review under 28 U.S.C. Section 1257(a), because the petitioner failed to properly raise for review the State or Federal constitutional questions at the trial level and before the Connecticut Appellate Court. 28 U.S.C. Section 1257(a) requires a petitioner to establish this court has jurisdiction over the issues raised in the petition. In addition, the subject matter of the questions raised by petitioner do not fall within those matters that may be reviewed by the Supreme Court.

STATEMENT OF THE CASE

Course of Proceedings in State Court

The respondent commenced a civil action in Connecticut State Superior Court on August 8, 1989 seeking money damages from the petitioner for defamation. The petitioner falsely accused the respondent of plagiarism. After a jury trial on the issues, a verdict in favor of the respondent was returned to recover from the petitioner $15,000.00 in damages.

The petitioner moved to set aside the verdict on the limited grounds that the evidence did not establish clear and convincing proof of malice and because the failure to retract a libelous statement should not have been considered as evidence of malice.

The motion was denied by trial Judge Flanagan. The petitioner then appealed to the Appellate Court on the grounds

that the trial court improperly denied the motion for directed verdict based on the lack of evidence of actual malice and because the trial court erred in its instruction to the jury that the respondent need not prove actual injury to his reputation.

The Appellate Court refused to review the second ground of appeal because petitioner failed to file a request to change and/or failed to take an exception to the jury charge on that issue at the trial level.

The Appellate Court sustained the verdict and judgment of the trial court. (Petitioners brief 3 - App. - 16 App.)

The petitioner then requested reconsideration for reargument, which was denied by the Appellate Court.

Subsequently, petitioner filed a petition for Certificate to Review with the Supreme Court of the State of Connecticut. That petition raised, for the first time, the constitutional questions. The petition was denied and a subsequent Motion for Reargument or Reconsideration and/or in the Alternate Motion for Reargument Em Banc was filed and denied by the Supreme Court of the State of Connecticut.

Petitioner then filed his Petition for Certiorari with the United States Supreme Court.

MISSTATEMENT IN THE PETITION

Pursuant to United States Supreme Court Rule 15.1, the respondent brings the following misstatements of facts contained in the petition to the attention of the court.

Petitioner's special defenses at the trial court level did not raise any State

or Federal constitutional challenges.

Petitioner's motion for directed verdict was based on the alleged insufficiency of evidence to support a finding of actual malice.

Petitioner's motion to set aside the verdict raised the alleged inadequacy of evidence for a finding of malice and an error in the charge for the instruction that a failure to retract a libelous statement could be considered evidence of malice.

Petitioner's appeal also did not raise any State or Federal constitutional questions but only the issues of (1) an inadequate jury instruction on the elements of defamation and (2) insufficiency of evidence as to proof of malice. The first issue was not reviewable because petitioner did not request a change on this part and/or did not take exception to the change.

Petitioner falsely states in the statement of the case that he was threatened by the respondent during a meeting.

Petitioner also falsely states that the Constitution of the United States contains requirements to designate the respondent as a "Public Official".

REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

The Supreme Court of the United States will not grant a petition for writ of certiorari based on 28 U.S.C. Section 1257(a) regarding the constitutionality of a state statute or a violation of a constitutional right, privilege or immunity unless there is a formal judgment by the highest court of the state on the issues raised within the

petition.

Where the constitutional issues were not raised at the trial court level and on appeal from the jury verdict, the state Appellate Courts lack jurisdiction over these issues not presented at the trial level.

The practice rules of the State of Connecticut precludes the Appellate Courts from considering any claims of error raised on appeal which were not distinctly raised at trial. (Petitioner's Petition of Writ of Certiorari 13-app).

In addition, the Supreme Court of the United States lacks jurisdiction to consider constitutional questions which were not timely and properly raised and decided in the state court below. Yee V. City of Escondido, 503 U.S. 519,523-533 (1992). Where the state courts are deprived of the opportunity to pass upon the issue of constitutionality the petitioner is estopped from raising the issue in a writ of certiorari. Snonks V. New Jersey, NH 1970, 90 S. CT 1563, 398 U. S. 71, 26 L. Ed 2d 54. Where the issue was not presented for review to the state courts in such a manner that it was necessarily decided by the highest state court, the United States Supreme Court has no power to consider the issue. Street V. New York, N. Y. 1969, 89 S. Ct. 1354, 394, U. S. 576, 22 L. Ed 572.

The petitioner's effort to have this court review errors set out in questions 3 and 4 of the petition must be denied for the foregoing reasons.

The Appellate Court's decision located in the petitioner's appendix is helpful in determining just what issues the petitioner's attorney raised on appeal. There were no issues raised

regarding State or Federal questions of constitutionality. No where in the issues presented in the petitioner's Connecticut Appellate brief is there a mention of constitutional violation of State or Federal law.

Thus, the Petition for Writ of Certiorari cannot now be used as a vehicle to raise issues which were never properly raised, presented and decided by the State of Connecticut courts.

In addition, the decision of the Appellate Court of Connecticut as contained within the petitioner's appendix rests on adequate non-federal grounds and the writ for certiorari should be denied for this additional reason. U.S. ex rel Pascal V. Burke D. C. P.A. 1950, 90 F. Supp. 868

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted

Brian M. Gildea